C.S. 1002

003

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

W.P. NO. 2222 **/2004**

PETITIONER : Bhanuram Sahu, Aged about 60 years,
S/o. Manbodhiram Sahu,
R/o. Village Billora, P.A. Mohdi,
Tahsil – Kurud, Distt. Dhamtari (C.G.)

VERSUS

RESPONDENTS :

1] State of Chhattisgarh
Through: Secretary,
Department of Forest,
DKS Bhawan, Raipur (C.G.)

2] Additional Forest Officer,
Dhamtari, Distt. Dhamtari (C.G)

3] Forest Conservator, Dhamtari
Distt. Dhamtari (C.G.)

4] Accountant General, Raipur,
Distt. Raipur (C.G.)

R. R. No. 2229/04
Presented by Shri M.V. Ratanpe
dated 26-7-04

RECEIVED-COPY
26/7/04
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1] **PARTICULARS OF THE PETITIONER (S):**

As stated above in the cause title.

2] **PARTICULARS OF THE RESPONDENT (S):**

As stated above in the cause title.

3] **PARTICULARS OF THE ORDER(S) AGAINST, WHICH THIS PETITION IS MADE.**

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2222/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1-2-2006

Shri Manoj Paranjpe, counsel for the petitioner.

Shri Sandeep Dubey, Govt. Adv. for respondents no.1 to 3.

Shri S.K. Beriwal, counsel for respondent No. 4.

Heard.

By this petition under Article 226/227 of the Constitution of India, the petitioner challenges the order dated 7/2/2003 (Annex.P/7) passed by the Divisional Forest Officer, Dhamtari whereby the pension order as well as the order of grant of gratuity has been cancelled.

Learned counsel for the petitioner submits that the order dated 7/2/2003 has been passed by the Divisional Forest Officer, Dhamtari on the ground that the appeal is pending adjudication against the order of acquittal. It is further submitted that the petitioner was prosecuted for an offence punishable under Sections 7 and 31(1)(d) read with Section 13(2) of the Prevention of Corruption Act and was acquitted of the charges vide judgment and order dated 23/8/2002 passed by the trial court. It is also submitted that after the judgment/order of acquittal, the suspension order dated 8/11/2000 was revoked by the authority on 25/9/2002 (Annex.P/3) and it was directed that since the petitioner has been retired on 30/6/2002 his pension case be finalized and the pension be paid to him. Thereafter, the pension of the petitioner was finalized on 21/10/2002 (Annex.P/5) and since then he was getting pension.

Learned counsel for the petitioner stated that the against the order of acquittal, an appeal was preferred by the State before the High Court and as such the impugned order has been passed by the Divisional Forest Officer on 7/2/2003 whereby the pension order as well as the order

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of grant of gratuity has been cancelled and now the petitioner is without pension.

Learned counsel for the petitioner referred to Rule 8 and 9 of the C.G. Civil Services (Pension) Rules, 1976 and stated that the pension can be withheld only in a case whereby the employee has been convicted for serious crime. He contended that once the petitioner has been acquitted and reinstated, he is entitled for the pension and grant of gratuity. It is submitted that the right to pension is a valuable right vesting in a Government servant. He placed reliance upon the judgment of the Apex Court in the case of Deokinandan Prasad vs. The State of Bihar and others (AIR 1971 SC 1409) (Paras 30, 32 & 34), wherein it has been held as under:

> *"30. The grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regarding to period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to the officer employee not because of the said order but by virtue of the Rules.*
>
> *32. Pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government servant.*
>
> *34. Right to receive pension is a property under Article 31(1) and by a mere executive order the State has no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. A writ of mandamus can well be issued to the State to properly consider the claim of the petitioner for payment of pension according to law."*

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Learned counsel for the petitioner further placed reliance upon the judgment of the Apex Court in the case of **Union of India vs. Jaipal Singh** reported in **2004(1) SCC 121** and the judgment of Gujarat High Court in the case of **Mukesh Kumar Premshankar Joshi vs. State of Gujarat and another** reported in **2004 LAB.I.C.271** wherein it has been held that it is required to be noted that the petitioner is acquitted and even at present, no departmental enquiry is pending against him. In that view of the matter, there is absolutely no justifiable reason for the Department not to reinstate the petitioner by revoking the suspension order. It is submitted that in the present case the petitioner was acquitted and even he has been retired. It is further submitted that the suspension of the petitioner was revoked and his pension case was finalized and he was getting pension. Surprisingly, by the impugned order, his pension order as well as the order of grant of gratuity has been cancelled on the ground of pendency of the appeal. It is also submitted that no departmental enquiry is pending against him, therefore, it is not open for the department to continue further action in view of filing of the criminal appeal against the order of acquittal. It is further submitted that it is a settled principle of law that if prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise.

Reliance is also placed upon the judgment of the Apex Court in the case of **S.S. Marwah vs. Union of India** reported in **1994 SCC (L&S) 1077**. It is contended that after the order of compulsory retirement was implemented prosecution was launched against the person on account whereof his pension was reduced and his gratuity was withheld pending

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disposal of the prosecution. In the said case, the person was acquitted of the charges and the direction was issued to the respondents to consider the grant/release of pension and gratuity as admissible under rules to any officer compulsorily retired within a period of four months.

Learned counsel for the State on the other contended that the pendency of criminal appeal against the petitioner is continuation of trial.

On perusal of the record, it is borne out that the petitioner was prosecuted for an offence punishable under Sections 7 and 31(1)(d) read with Section 13(2) of the Prevention of Corruption Act and was acquitted of the charges and after the judgment/order of acquittal, the suspension order was revoked by the authority and it was directed that since the petitioner has been retired on 30/6/2002 his pension case be finalized and the pension be paid to him. Thereafter, the pension of the petitioner was finalized and since then he was getting pension. Surprisingly, vide the impugned order dated 7/2/2003, the pension order as well as the order of grant of gratuity has been cancelled and now the petitioner is without pension.

This Court, relying upon the decisions in the cases of **Union of India vs. Jaipal Singh** reported in **2004(1) SCC 121** and **Mukesh Kumar Premshankar Joshi vs. State of Gujarat and another** reported in **2004 LAB.I.C.271**, disposed of Writ Petition No.1220/2001 (Banwarilal Shrivastaya vs. State) vide order dated 14/7/2004, wherein it has been held as under:

> *"Having considered the facts and circumstance, the material on record and in view of the aforesaid judgments, it is directed that the order of suspension is revoked from the date of acquittal of the petitioner. Since the petitioner was suspended during the pendency of the criminal case and he has been*

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acquitted, he is entitled for consequential benefits from the date of acquittal."

Having considered the facts and circumstances and the material on record and in view of the law laid down in the aforesaid cases, the order dated 7/2/2003 (Annex P/7), so far as is relates to the petitioner regarding cancellation of the pension as well as grant of gratuity is set aside with costs.

Accordingly, the petition stands disposed of.

Certified copy as per rules.

Sd/-
Fakhruddin
Judge

H/-

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